NORTH CAROLINA LAW REVIEW

Volume 27 | Number 4 Article 2

6-1-1949

Green v. Kitchin

Albert Coates

GREEN *v.* KITCHIN

ALBERT COATES*

On April 1, 1946, the mayor and commissioners of the Town of Weldon adopted a resolution authorizing the town police chief, P. R. Kitchin, to attend a three months' session of the National Police Academy conducted by the Federal Bureau of Investigation in Washington, D. C., with salary and expenses paid by the town. On August 27, 1947, a town taxpayer called on the mayor and commissioners of the Town of Weldon to recover $1,100.00 paid to the police chief for salary and expenses while attending the National Police Academy pursuant to the foregoing resolution, and on their refusal to comply with this demand brought a taxpayer's suit against the mayor, commissioners, and chief of police.

This lawsuit cast its shadow beyond the borders of the Town of Weldon and involved officers who had attended similar sessions of the National Police Academy and received their salaries and expenses while attending; the governing boards of cities, towns, and counties, and the heads of state departments, who had sent them and authorized their salaries and expenses to be paid from revenues derived from taxes.

It involved city councilmen of nearly three hundred cities and towns, county commissioners of one hundred counties, a score or more of state department heads, and the officials and employees they had sent by the thousands to training schools lasting from three days to six weeks conducted by the Institute of Government at the University of North Carolina at Chapel Hill.

It involved hundreds of city, county, and state officials attending annual meetings of their respective official associations in North Carolina and other states with expenses paid from taxes levied by their respective governmental units.

For the first time in any American court this case squarely raised the question whether tax monies may be spent for the salaries and expenses of officials while attending training schools to fit themselves the better for the public service. This question involves the following basic issues:

(1) Do the Legislative Grants of Powers to the Town of Weldon Authorize the Appropriation of Tax Revenues to Pay the Salary and Expenses of its Police Chief While Attending the Ninety-Day Police Training School Conducted by the National Police Academy?

* Professor of Law, University of North Carolina; Director, Institute of Government.

(2) Is Police Training for Police Officers a Public Purpose for Which Tax Revenues May Be Appropriated Within the Meaning of Article V, Section 3, of the North Carolina Constitution?

(3) Is Police Training for Police Officers a Necessary Expense Within the Meaning of Article VII, Section 7, of the North Carolina Constitution?

(4) Does Payment of the Salary and Expenses of the Police Chief of the Town of Weldon while Attending a Police Training School Come Within the Prohibition of Article I, Section 7, of the North Carolina Constitution, Providing: "No Men or Set of Men Are Entitled to Exclusive or Separate Emoluments or Privileges from the Community but in Consideration of Public Service?"**

I

Do the Legislative Grants of Powers to the Town of Weldon Authorize the Appropriation of the Tax Revenues to Pay the Salary and Expenses of its Police Chief While Attending the Ninety-Day Police Training School Conducted by the National Police Academy?

"It is a general and undisputed proposition of law," wrote Judge Dillon in his treatise on *Municipal Corporations*, "that a *municipal corporation possesses and can exercise the following powers, and no others:* First, those granted in *express words*; second, those *necessarily or fairly implied* in or *incident* to the powers expressly granted; third, those *essential* to the accomplishment of the declared objects and purposes of the corporation,—not simply convenient, but indispensable."[1] The Supreme Court of North Carolina quoted these propositions with approval over fifty years ago, and has affirmed and reaffirmed them in decisions from that day to this.[2]

Legislative grants of power provide "in express words" that municipal corporations in North Carolina shall have the following powers:

** It is perhaps a natural coincidence that these issues should have arisen in North Carolina: (1) where the Institute of Government has pioneered in programs of in-service training for all groups of city, county, and state officials and these programs are integrating in a great University of public officials; (2) where the Federal Bureau of Investigation conducting the National Police Academy has participated in the police training program of the Institute of Government in return for Institute of Government participation in the National Police Academy; (3) where the Director of the Institute of Government was privileged to participate in the trial of this case and in the preparation of the brief for the defendants on appeal, in support of a cause as close to the heart of the Institute of Government and the F.B.I. as to the defendants in this case. This article presents the substance of this brief, together with the holdings of the court on the issues raised.—Ed.

[1] 1 DILLON, MUNICIPAL CORPORATIONS §237 (5th ed. 1911).

[2] *E.g.*, Cody Realty & Mortgage Co. v. Winston-Salem, 216 N. C. 726, 6 S. E. 2d 501 (1940); Asheville v. Herbert, 190 N. C. 732, 130 S. E. 861 (1925); State v. Webber, 107 N. C. 962, 12 S. E. 598 (1890).

(1) ". . . the powers prescribed by statute, and those necessarily implied by law, and no other."[3]

(2) The power "To provide for the municipal government of its inhabitants in the manner required by law."[4]

(3) The ". . . power to make ordinances, rules and regulations for the better government of the town, not inconsistent with this chapter and the law of the land, as they may deem necessary. . . ."[5]

(4) The power to ". . . appoint town watch or police, to be regulated by such rules as the board may prescribe."[6]

(5) "A policeman shall have the same authority to make arrests and to execute criminal process, within the town limits, as is vested by law in a sheriff."[7]

These legislative grants of powers by general laws to all cities and towns follow the pattern of legislative grants by private laws and special acts to individual cities and towns for a hundred and fifty years and correspond to specific grants of powers in the Town of Weldon's charter in 1891.[8]

Is the power to send the police chief to a police training school "fairly implied in, or incident to, the powers expressly granted?"

> In *Smith v. New Bern,* the Supreme Court of North Carolina gave expression to the doctrine that municipal powers do not have to be granted in words expressly describing each prospective operation: "All corporations derive their powers from legislative grants and can do no act for which authority is not expressly given or may not be reasonably inferred. But if we say they can do nothing for which a warrant could not be found in the language of their charter, we deny them, in many cases, the power of self-preservation, as well as many of the means necessary to effect the essential object of their creation; hence they may exercise all the powers within the fair intent and purpose of their creation which are reasonably necessary to give effect to powers expressly granted, and in doing this they must have the choice of means adapted to ends and are not confined to any one mode of operation. . . . Here the power is granted in express terms 'to

[3] N. C. GEN. STAT. §160-1 (1943).
[4] *Id.* at §160-2(7).
[5] *Id.* at §160-52.
[6] *Id.* at §160-20.
[7] *Id.* at §160-21.
[8] N. C. Laws 1893 c. 83, §17 provides: ". . . the board of commissioners . . . may . . . appoint and regulate policemen; suppress and remove nuisances . . . appoint constables . . . preserve the peace and order and execute the ordinances of the town." Section 23 of the same law provides: "That it shall be the duty of the chief of police to see that the laws, ordinances and orders of the board of commissioners are enforced, and to report all breaches thereof to the mayor; to preserve the peace of the town by suppressing disturbances and apprehending offenders, and for that purpose he shall have all the powers and authority vested in sheriffs and county constables. . . . The police officers of the town of Weldon shall have the power when in the pursuit of a criminal charged with the commission of any offense within the corporate limits of said town of Weldon to follow him to any part of Halifax County and may arrest him."

make all such necessary ordinances, rules and orders as may tend to the advantage, improvement and good government of the town,' thereby vesting in the corporation the *discretion* as to the measure and mode of exercising the powers conferred."[9]

This court has from time to time suggested guiding principles which it has followed in implying powers from those expressly granted: Is a duty imposed by law on the city, in this field of activity?[10] Is the power to be exercised for the public benefit?[11] Is the city given discretion of action in this field?[12] Is there a reasonable relation between the power sought to be employed and the condition sought to be remedied?[13]

The case before the court came within these guiding principles: Law enforcement is a duty imposed by law on city authorities. Better law enforcement resulting from the training of law enforcement officers is unquestionably for the public benefit. City authorities are given discretionary power "to make ordinances, rules and regulations for the better government of the town,"[14] and the power to appoint police is coupled with the specific provision that the police may be "regulated by such rules as the board may prescribe."[15] There is a reasonable relation between the power sought to be implied—police training—and the condition sought to be remedied—arrest and conviction of criminals and restraint of organized and unorganized crime. Many cities and towns are beginning to base promotion in rank and pay on the extent to which police officers voluntarily take advantage of opportunities for police training locally provided. Surely a rule or regulation requiring a police chief to keep himself abreast of current techniques and developments in criminal investigation through short courses of systematic training is a reasonable rule or regulation within the letter and the spirit of the express grant of power to make rules and regulations for the police, and for the better government of the town.

From an express grant of power to "appoint market houses and regulate the same"[16] the Supreme Court of North Carolina implied the power to contract with the plaintiff for the building of a market house.[17] From an express grant of power to "provide for keeping in proper repair the streets and bridges of (*sic*) the town,"[18] it implied the power to remove the plaintiff's shade trees alleged to be obstructing the full

[9] 7 N. C. 14, 19 (1874).
[10] Tate v. Greensboro, 114 N. C. 392, 19 S. E. 767 (1894).
[11] State v. Higgs, 126 N. C. 1014, 35 S. E. 473 (1900).
[12] Smith v. New Bern, 70 N. C. 14 (1874).
[13] Rhodes, Inc. v. Raleigh, 217 N. C. 627, 9 S. E. 2d 389 (1940).
[14] CODE §2673 (1939).
[15] *Id.* at §2641.
[16] N. C. Laws c. 28, §13 (1779).
[17] Smith v. New Bern, 70 N. C. 14, 18 (1874).
[18] CODE §3803 (1883), cited in Tate v. City of Greensboro, 114 N. C. 392, 398, 19 S. E. 767, 768 (1891).

use of the street.[19] From an express power to sell its property at public auction, it implied the power to contract with a real estate broker to effectuate the sale.[20] From an express power to appoint a town watch or police " 'to be regulated by such rules as the board may prescribe' "[21] and "to make ordinances, rules and regulations for the better government of the town,"[22] it implied the power "to give to one policeman the rank of chief over the others,"[23] it implied the power in the city council to appoint a commissioner of police over the police chief to co-ordinate the various functions of the police department and provide for the greater efficiency of the police force.[24]

Courts in other jurisdictions have implied similar powers in cases nearer to the point of this case than any thus far coming before the Supreme Court of North Carolina. From an express grant of power to control and regulate the construction of piers and wharves in 1930 the Supreme Court of Minnesota implied power in the City of Minneapolis to send city officials to a meeting of the Mississippi Valley Association at St. Louis and of the Rivers and Harbors Congress in Washington, D. C., to obtain information on a proposed deep waterway down the Mississippi River which might require the construction of piers and wharves at Minneapolis.[25] From an express grant of power to cities and towns to levy taxes for school purposes, in 1934 the Supreme Court of Maine implied power in the City of Farmington to send its school superintendent to a School Superintendents' Convention.[26] From an express grant of "all powers necessary or appropriate to a municipal corporation and the general welfare of its inhabitants," in 1943 the Supreme Court of California implied power in the City of Roseville to pay expenses of city officials to a state-wide conference of municipal officials for the discussion of municipal problems. From an express grant of power "to preserve the peace and prevent vice and immorality," in 1926 the Supreme Court of Connecticut implied the power to hire and bring in a private detective with special investigative skills to cope with local crime problems.[27]

Previous North Carolina decisions, as well as those of other jurisdictions, agree with the principal case that the Town of Weldon had

[19] Tate v. Greensboro, 114 N. C. 392, 398, 19 S. E. 767, 768 (1891).
[20] Cody Realty & Mortgage Co. v. Winston-Salem, 216 N. C. 726, 6 S. E. 2d 501 (1939).
[21] CODE §2641 (1939), cited in Wilson v. Mooresville, 222 N. C. 283, 289, 22 S. E. 2d 907, 912 (1942).
[22] CODE §2673 (1939).
[23] Wilson v. Mooresville, 222 N. C. 283, 290, 22 S. E. 2d 907, 913 (1942).
[24] Riddle v. Ledbetter, 216 N. C. 491, 5 S. E. 2d 542 (1939).
[25] Tousley v. Leach, 180 Minn. 293, 230 N. W. 788 (1930).
[26] Inhabitants of Town of Farmington v. Miner, 133 Me. 162, 175 Atl. 219 (1934).
[27] Bridgeman v. The City of Derby, 104 Conn. 1, 132 Atl. 25 (1925).

the power to send its police chief to a police training school for systematic instruction improving the quality of law enforcement in the Town of Weldon for the protection of the lives and properties of all its citizens.

Mr. Justice Ervin, speaking for the court, sustains this argument:

"The plaintiff asserts initially that this question must be answered in the negative because the Town of Weldon lacks statutory power to use public funds to train its police.

"A city or town has 'the powers prescribed by statute, and those necessarily implied by law, and no other.' G. S. 160-1. Neither its charter nor the general law confers upon the Town of Weldon in express words any authority to employ any of its resources in providing instruction for its police. Thus, the question arises at the threshold of the case as to whether such a power is necessarily implied by law. It is an established rule that a municipal corporation is authorized by implication to do an act if the doing of such act is necessarily or fairly implied in or incident to the powers expressly granted, or is essential to the accomplishment of the declared objects and purposes of the corporation. . . . .

"In Blackstonian phrase, North Carolina has delegated to municipalities power to maintain law and order within their respective borders since 'the time whereof the memory of mankind runneth not to the contrary.' Both its charter and the general law expressly empower the Town of Weldon to appoint and employ police for performing this function within its limits.

"The Legislature contemplated that persons engaged as police officers under this explicit grant of authority should be qualified to do the task specified above. Poets may be born, but policemen must be made. Some of the statutes relating to the duties and powers of the police appear in article 6 of chapter 15 and article 2 of chapter 160 of the General Statutes. Both the letter and the spirit of these laws reveal that a city or town cannot convert a neophyte into a policeman in the true sense of the word by the simple expedient of investing him with a badge, a billy, a firearm, and a uniform.

"Before one is fitted to discharge the duties of a police officer, he must know what those duties are and how they can be performed. The requisite preparedness necessitates the possession of a special knowledge, which must be acquired either by travelling the hard road of experience or by sitting at the feet of teachers qualified to give proper instruction.

"Since the fact is a matter of common and general knowledge in this jurisdiction, this Court judicially knows that persons employed to serve as police in the municipalities of this State seldom possess familiarity with their duties or skill in performing them when they enter such service. Although one may be experienced in law enforcement, his proficiency as an officer can undoubtedly be enhanced by proper instruction in modern methods of crime pre-

vention and detection. Certainly a city or town must have competent policemen if it is to protect persons and property within its boundaries against the lawless. Whether a municipal corporation should rely upon experience, or training, or both for securing competency in its police ought to be left to the discretion of its governing body. Likewise, whether or not necessity compels or prudence justifies a specific outlay of municipal funds to provide special training for a particular officer seems to be a problem which of right lies within the domain of the municipality involved.

"For these reasons, we conclude that the power of a city or town to spend tax money for instruction of its police in the performance of their duties is fairly implied in and incident to a power expressly conferred upon the city or town to appoint and employ police for preserving law and order within its limits. It follows that the Town of Weldon had implicit legislative authority to make the expenditure set out in the complaint.

"The case at bar is readily distinguishable from *Madry v. Scotland Neck*, 214 N. C. 461, 199 S. E. 618, holding that cities and towns do not possess implied power to offer rewards for the apprehension or conviction of felons. While the legislature has authorized municipalities to maintain law and order within their respective limits, it has not empowered them to engage in the apprehension of law breakers elsewhere or to undertake to prosecute criminal cases in the courts."[28]

Is the power to send the police chief to a police training school "essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable?"

Law enforcement is one of the oldest functions of government. Keeping the peace is one of the oldest functions of organized communities. For this purpose a "town watch" of citizens was established in Wilmington as early as 1745, and similar citizen organizations were provided in the charters of cities and towns throughout the state. The first grant of general powers to all cities and towns in 1854 provided for the appointment of a "town watch or patrol." When it became apparent that law enforcement could not be handled as a citizen sideline—that "everybody's business was nobody's business"—full time policemen were authorized by law, and police forces have grown with the growth of cities and towns until today there are around four times as many town and city police officers enforcing laws as township constables, county sheriffs and deputies, state highway patrolmen and State Bureau of Investigation agents combined; and they are handling more than four times as many criminal law enforcing problems of the cities, the counties, and the state of North Carolina.

[28] Green v. Kitchin, 229 N. C. 450, 454 *et seq.*, 50 S. E. 2d 545, 547 *et seq.* (1948).

Day in and day out they are "keeping the peace" and protecting life and property in areas which are part and parcel of the counties and the state as well as of cities and towns; taking oaths to enforce the ordinances of cities and towns; spending more of their time enforcing laws of the state legislature than enforcing ordinances of city councils. They are authorized by law to protect city-owned property beyond the city limits, to protect the lives and properties of people living on this property, and to "keep the peace" thereon. Statutes in many places extend their law enforcing operations over territory a mile or more beyond the city limits—territory in which city ordinances are not in force and where state law is the only law for officers to enforce. Common law in force in North Carolina authorizes police officers to follow fleeing felons in hot pursuit beyond the city limits to the borders of the state—irrespective of incidental ordinances possibly connected with the felony. Township, county and state officials solicit and accept their aid to the point that as a matter of practice in many counties they leave the enforcement of state-wide criminal laws within city limits to city police—including felonies and misdemeanors beyond the scope of city ordinance-making power. This practice is clearly recognized in the statute providing that town and city police shall "have the same authority to make arrests and to execute criminal process within the town limits, as is vested by law in a sheriff."[29]

The plaintiff's brief did not deny that law enforcement is a governmental function. His argument implied that it is "essential to the accomplishment of the declared objects and purposes" of the state and that it is "essential to the declared objects and purposes" of these particular subdivisions of the state known as *counties,* but that it is not "essential to the accomplishment of the declared objects and purposes" of those particular subdivisions of the state known as *cities and towns*! "The duty to apprehend and prosecute felons is imposed upon county and state officers,"[30] he said. "No such duty is required of a town."[31] Appellant continued: "So far as enforcement of criminal law is concerned a policeman is an officer of the State and not of the town."[32] He cited *Gentry v. Town of Hot Springs*[33] for the proposition that officers of municipal corporations are not ". . . agents of the corporation but of the 'greater public'—the State."[34] From these authorities plaintiff concluded: "As

[29] Note 7, *supra.*

[30] Brief for appellant, page 8, Green v. Kitchin, 229 N. C. 450, 50 S. E. 545 (1948).

[31] *Ibid.* Appellant cited as his authority Madry v. Scotland Neck, 214 N. C. 461, 199 S. E. 618 (1938).

[32] *Ibid.* For his authority appellant cited McIlhenney v. Wilmington, 127 N. C. 146, 37 S. E. 187 (1900).

[33] 227 N. C. 665, 667, 44 S. E. 2d 85, 86 (1947).

[34] Brief for appellant, page 7, Green v. Kitchin, 229 N. C. 450, 50 S. E. 2d 545 (1948).

an officer of the town his [the policeman's] duties are to enforce the town ordinances and regulations. These ordinances are civil in their nature and not criminal."[35]

The defendant in the principal case had no quarrel with the plaintiff's claim that it is the duty of the chief of police to see that the laws, ordinances and orders of the board of commissioners are enforced. For a long time these ordinances were enforced in civil suits for the penalties imposed, and civil suits for penalties may be brought to this day.[36] But the plaintiff himself pointed out in his brief that seventy-five years ago the legislature by general law made the violation of a town ordinance a misdemanor punishable by fine not exceeding $50.00 and imprisonment not exceeding thirty days in jail, and ever since 1871 a party violating a town ordinance may be prosecuted by the state for the misdemeanor and sued by the town for the penalty.[37] It is familiar learning that a single act may be the basis for a civil suit for damages and for a criminal prosecution involving criminal punishment.

The defendant had no quarrel with the plaintiff's claim that a civil penalty for violating a city ordinance was a debt for which no person might be arrested and imprisoned within the meaning of Article I, Section 16, of the North Carolina Constitution. But the violation of a city ordinance is also a crime for which any person may be arrested and imprisoned.[38] This status is further illustrated in the fact that warrants for the apprehension and trial of violators of municipal ordinances run against "the form of the statute and the peace and dignity of the State"; that prosecutions are brought in the name of the state; that punishment is imposed in the name of the state; and the fact that for a violation of a city ordinance he may be sued by the city for a penalty does not do away with the consequence that he may be punished by the state for a crime.[39] In fact, the overwhelming majority of city ordinances are enforced by criminal prosecutions under the statute and not by civil suits for penalties under the ordinance. Thus by following the logic of the plaintiff's argument we arrive at the conclusion that a city police

[35] *Ibid.*

[36] State v. Abernethy, 190 N. C. 768, 130 S. E. 619 (1925); *accord,* School Directors v. City of Asheville, 137 N. C. 503, 50 S. E. 279 (1905).

[37] State v. Abernethy, 190 N. C. 768, 130 S. E. 619 (1925).

[38] State v. Earnhardt, 107 N. C. 789, 12 S. E. 426 (1890). (Cited by plaintiff in support of his proposition, where the court upheld a conviction for disorderly conduct on the ground that the statute expressly made the violation of a city ordinance a misdemeanor for which criminal punishment must be imposed.)

[39] It was held in School Directors v. City of Asheville, 137 N. C. 503, 510, 50 S. E. 279, 281 *et seq.* (1925) that "A fine imposed for an assault, or for retailing without license, or any other misdemeanor, committed within the corporate limits, cannot be distinguished, in respect to the power of the Legislature to appropriate or give it . . . to the town from a like fine imposed for a misdemeanor committed by violating a town ordinance." *Accord,* State v. Abernethy, 190 N. C. 768, 130 S. E. 619 (1925).

officer is acting in the name of the state and not of the city even when he is enforcing city ordinances, and little or nothing is left for him to do in the name of the city alone.

Certainly a city ordinance, whether enforced in a civil suit for a penalty, or in a prosecution for a crime, is just as valid when passed by the city council within the limits authorized by the Legislature as if it were passed directly by the Legislature itself. "Valid ordinances of municipal corporations are as binding on the corporators and the inhabitants of the place as the general laws of the state upon the citizens at large," says the author of the most recent standard treatise in this field.[40] The Supreme Court of the United States has held that "A municipal by-law or ordinance, enacted by virtue of power for that purpose delegated by the legislature of the state, is a state law within the meaning of the Federal Constitution."[41] The Supreme Court of North Carolina put statute and ordinance on the same footing in *Newton v. The Texas Company*, where the defendant violated a city ordinance regulating the manner of storing gasoline and the court said: "That the violation of a statute, or ordinance of a city or town, is negligence *per se*, or a distinct wrong in law, is the rule established by the more recent cases."[42] In the case of *Hendrix v. Southern Ry.*, where the defendant railroad had violated an ordinance by stopping over three minutes at a street crossing, the Supreme Court of North Carolina declared: "It is well settled in this jurisdiction that the violation of a town or city ordinance, or State statute, is negligence *per se*. . . ."[43] This proposition has been consistently quoted with approval.[44]

Phrases in the case of *Madry v. Scotland Neck*, supra, lend surface aid to the plaintiff's argument that law enforcement is a state and not a city function, but in cutting through phrases to the facts all similarity disappears. The court in that case refused to imply a power in the town to offer a $500.00 reward for information leading to the arrest and conviction of the person who killed its police chief. This refusal may be rested on the ground that the legislative grant of power to offer rewards for the capture and conviction of felons to the chief executive of the state precludes the implication of power to city governing boards, in the absence of an express grant.[45]

[40] 2 McQUILLIN, MUNICIPAL CORPORATIONS §674 (2nd ed. 1939).
[41] Atlantic Coast Line R. R. v. City of Goldsboro, 232 U. S. 548, 555 (1914).
[42] 180 N. C. 561, 565, 105 S. E. 433, 435 (1920).
[43] 198 N. C. 142, 150 S. E. 873 (1929).
[44] *See, e.g.*, White v. N. C. R. R., 216 N. C. 79, 87, 3 S. E. 2d 310, 314 (1939) (where a train speeded 40 miles an hour in violation of a city ordinance); Jones v. Bagwell, 207 N. C. 378, 382, 177 S. E. 170, 172 (1934) (where an automobile violated a city speed limit ordinance); Sanders v. Atlantic Coast Line R. R., 201 N. C. 672, 161 S. E. 320 (1931) (where a train violated ordinance regulating speed and signal bells at crossings).
[45] N. C. GEN. STAT. §15-53 (1943). Color is given to this argument by G. S.

The decision in *Madry v. Scotland Neck*, supra, may also be rested on the ground it has rested on in many states—that the policy of offering rewards to citizens or officers for doing in the end what it is their duty to do in the beginning might well defeat its purpose and undermine enforcement of the law if invoked indiscriminately by a multiplicity of local units subject to local pressures by slowing down the present chase in the hope of a future bonus. In *Malpass v. Caldwell* the Supreme Court of North Carolina refused to reward an officer under G. S. 15-53, giving the governor power to offer a reward for a person committing a felony or other infamous crime, saying through Chief Justice Pearson that the purpose of this statute was "to call in volunteers by the offer of a bounty, and not to relieve officers of the law from the discharge of their sworn duty."[46] The Supreme Court of Missouri has outlined the argument that it is against public policy to give officers a reward ". . . for the performance of their sworn official duty and for which they received fixed fees and salaries . . ."—admitting an exception in the case of "extraordinary service or service above and beyond their sworn official duties."[47]

Grant the accuracy of the conclusion in *Madry v. Scotland Neck*, supra, that the court will not only imply a power to offer a reward to a citizen for doing a citizen's duty or to an officer for doing an officer's duty, it is submitted that the Supreme Court of North Carolina never intended this decision to be invoked to deny the city's power to pay for police training of a police chief—not in reward for law enforcing duties already done but in preparation for law-enforcing duties yet to come in a more effective manner and on a higher professional level.

The plaintiff quoted the phrases but not the facts of *McIlhenney v. Wilmington*, supra, in saying: " 'Police officers can in no sense be regarded as agents or servants of the city.' "[48] In that case the city was sued for injuries inflicted by a police officer in making an arrest. The court held that a city was not liable for the torts of its police officer committed in the performance of a governmental function. But neither is a county liable for the torts of its sheriff committed under similar circumstances; nor the state for the torts of its officers. The very fact

15-54 providing: ". . . that no reward shall be paid to any sheriff or other officer for any arrest made for a crime committed within the county of such sheriff or officer making such arrest"; by G. S. 18-25, 18-26 expressly granting rewards for seizure of stills; by Hutchins v. Board of Commissioners of Granville County, 193 N. C. 659, 137 S. E. 711 (1927), where in answer to the argument that the statute offering the reward is against public policy, the court replied that the policy had already been determined by the General Assembly.

[46] 70 N. C. 130, 133 (1874).

[47] Bennett v. Gerk, 61 S. W. 2d 241, 245 (1933).

[48] Appellant's brief, page 8, Green v. Kitchin, 229 N. C. 450, 50 S. E. 2d 545 (1948), cited from 127 N. C. 146, 150, 37 S. E. 187, 188 (1900).

that this immunity runs to the state, the county, and the city as governmental units, and not to the officer of the state, the county and the city as individuals, shows beyond question that it is the governmental function which is the governmental unit's shield—that in the performance of a governmental function the city is no more liable for the torts of its officers than the county or the state, and for the same reason.

Defendants in the principal case argued that in *McIlhenney v. Wilmington*, supra, the court was holding that " 'Police officers can in no sense be regarded as agents or servants of the city' "[49] within the technical meaning of the term "respondeat superior"; that it was not undertaking to draw a generic distinction between cities and counties as such, and that the Supreme Court of North Carolina had never intended that this decision be twisted into a denial of a city's power to improve the quality of its law enforcing officers by professional training.[50]

Defendants further argued that the "town watch or police" from the time of its origin in London centuries ago has never been confined to the enforcement of municipal regulations—that from its beginning it was designed to "keep the peace" in a broader sense and to give the added protection to life and property needed in a thickly populated city which the sheriff and his deputies were not organized to give; that the "town watch or police" came into this country freighted with the accumulated meaning of its history as did the "sheriff"; that from the beginning of cities and towns in North Carolina, charter grants of power as in the Town of Weldon charter, have coupled with the duty to enforce ordinances the duty to "keep the peace" whether it is threatened by the violation of a city ordinance or of a general law of the state, and that the general law of the state gives town policemen the same authority to make arrests within the town limits as is vested by law in the county sheriff.[51]

[49] *Ibid.*

[50] This is borne out by the very language of the court in McIlhenney v. Wilmington, 127 N. C. 146, 37 S. E. 187 (1900), saying at page 150, 37 S. E. 187, 188: ". . . they [municipalities] are subdivisions of the State, created in part for convenience in enabling the State to enforce its laws in each locality with promptness . . ."; by the language of the court in another case cited by the plaintiff in his brief, Gentry v. Town of Hot Springs, 227 N. C. 665, 667, 44 S. E. 2d 85, 86 (1947): "To the extent that such local or special organizations possess and exercise governmental powers, they [cities and towns] are, as it were, departments of state; as such, in the absence of any statute to the contrary, they have the privilege and immunity of the state . . ."; by the language of the court in Scales v. City of Winston-Salem, 189 N. C. 469, 470, 127 S. E. 543, 544 (1925): ". . . a municipal corporation acts as an agency of the state for the better government of that portion of its people who reside within the municipality, while in its private character it exercises powers and privileges for its own corporate advantage."; by the language of the court in Town of Saluda v. County of Polk, 207 N. C. 180, 187, 176 S. E. 298, 302 (1934): "The county of Polk and the town of Saluda are both children, as it were, of the State. The State, the mother, should treat both alike, though one is bigger than the other."

[51] This is borne out by the Supreme Court of North Carolina in Turner v. City

Language of the court has from time to time indicated a distinction between counties and towns. In *White v. Commissioners of Chowan*, Mr. Justice Merrimon rested this distinction on the ground that counties are subdivisions of the state created at the will of the state for the administration of government on a local plane while municipal ". . . corporate powers are granted specially to the citizens of the city or town at their solicitation and for their special benefit and advantage, in many respects."[52] In *Mayo v. Commissioners of Town of Washington*, Mr. Justice Clark picked up this distinction in these words: ". . . municipalities are in fact not so much for governmental purposes as for business needs, such as paving, lights, security against fire, water, sewerage, and the like, which are the necessities of a dense population, and which can be furnished more cheaply and effectively by the representatives of the municipality chosen to administer its common interests, than by subjecting each citizen to the unrestricted demands of organizations of private capital."[53] But this distinction was not necessary to the decision in either case. The defendants further argued that the basic distinction the Supreme Court of North Carolina has drawn and sustained from the beginning is the distinction between governmental and proprietary functions; that cities and towns were never held liable for the torts of their agents so long as they confined their activities to governmental functions; that if and when counties are authorized to take on "proprietary" functions in addition to their governmental functions, it would not be inconceivable that liability for the torts of its agents in the performance of its agents may follow as it followed in the case of cities and towns. This happened in *Henderson v. Twin Falls County*,[54] where the Supreme Court of Idaho held the county liable to a paying patient in a county owned and operated hospital on the ground that the county was carrying on a "proprietary" function.[55]

So far as the plaintiff's argument was based on his contention that law enforcement is a state function and a county function, but not a city function, it appears that the state might send officers to training schools and the county might send officers to training schools, but not the city—which does more actual law enforcement in state and county territory than state and county combined. Suppose this argument should prevail and the cities and towns should take it at its face value and confine

of New Bern, 187 N. C. 541, 122 S. E. 469 (1924) which admitted that one of the city government's primitive uses was the protection of life and limb.

[52] 90 N. C. 437, 440 (1884).

[53] 122 N. C. 5, 26, 29 S. E. 343, 349 (1898) (dissent).

[54] 56 Idaho 124, 50 P. 2d 597 (1935).

[55] Other courts have applied this distinction between governmental and proprietary functions to counties as to cities. Authorities are collected in 101 A. L. R. 597 (1936).

police to the enforcement of local ordinances and to keeping the peace only when a local ordinance is violated? Suppose cities and towns should go further and ask the counties and the state to assume police pay for that proportion of police time spent in the performance of law enforcement duties as a function of the state? Suppose they should ask the state to expand state law enforcing agencies to take up the resulting slack? What of the historic doctrine that "crime is local?" And what of the terrific centralization of power in the state flowing from literal compliance with the plaintiff's claim? Law enforcement is one of the essential objects of cities and towns as subdivisions and agencies of the state—not merely convenient but indispensable, and better law enforcement through police training is essential to the accomplishment of this object.

In sustaining the defendant's foregoing argument, Mr. Justice Ervin said:

> ". . . the plaintiff maintains that the expenditure in controversy was illegal under Article VII, Section 7, of the Constitution even if it had legislative approval and was for a public purpose. The plaintiff asserts here that the prevention, detection, and prosecution of crime is a function of the State and not of the municipality; that the police of a city or town act for the State and not for the municipality when they undertake to enforce the law; and that in consequence the cost of training police officers of a city or town cannot be deemed a necessary expense of the city or town under Article VII, Section 7, precluding a municipal corporation from levying or collecting taxes 'except for the necessary expenses thereof' without first being authorized so to do by a vote of the majority of its qualified voters.
>
> "The unsoundness of this contention is revealed by a consideration of the legal characteristics of cities and towns. 'A municipal corporation is dual in character and exercises two classes of powers—governmental and proprietary. It has a twofold existence—one as a governmental agency, the other as a private corporation. Any activity of the municipality which is discretionary, political, legislative or public in nature and performed for the public good in behalf of the State, rather than for itself, comes within the class of governmental functions. When, however, the activity is commercial or chiefly for the private advantage of the compact community, it is private or proprietary. When injury or damage results from the negligent discharge of a ministerial or proprietary function it is subject to suit in tort as a private corporation. While acting in behalf of the State in promoting or protecting the health, safety, security, or general welfare of its citizens, it is an agency of the sovereign. No action in tort may be maintained for resulting injury to person or property."[56]

[56] Green v. Kitchin, 229 N. C. 450, 456 *et seq.* 50 S. E. 545, 549 (1948).

II

Is Police Training for Police Officers a Public Purpose for Which Tax Revenues May Be Appropriated Within the Meaning of Article V, Section 3, of the North Carolina Constitution?

"Public purpose," said the Supreme Court of North Carolina in *Greensboro-High Point Airport Authority v. Johnson*, ". . . involves a reasonable connection with the convenience and necessity of the particular municipality whose aid is extended in its promotion."[57] In holding the Teachers and State Employees' Retirement Act to be a public purpose in *Bridges v. City of Charlotte*, the Supreme Court of North Carolina said:

> "The benefit to the general public comes from a policy, widely approved, and adopted here, not without careful and exhaustive study, and with appreciation of its effect upon the entire citizenry, in the enhancement of the State's largest and most important enterprise, the conduct of the public schools. The relation of the Retirement Plan to the public school system has been fully discussed above, and the discussion will not be repeated here. It is sufficient to say that the expected improvement in standards of service, and the stabilization of teacher employment, are sufficient to constitute a public purpose, and justify the imposition of the tax."[58]

These recent holdings hue to the line laid down in previous decisions of the court distinguishing between enterprises conferring "public benefit" and those conferring "private gain." There is not a public purpose, says the court, in advancing "any mere business enterprise not of a public nature, for the incidental and substantial benefits its successful prosecution may confer upon a community in the midst of which it is carried on." On the other hand, "it is not necessary, in order that a use may be regarded as public, that it should be for the use and benefit of every citizen in the community," continues the court. It may be "intended to confer public benefit as well as secure private gain as in case of a projected railroad. . . . Railroads, canals and the like . . . are both private undertakings and for a public purpose."[59] Pursuant to these guiding principles the court has included within the scope of public purpose: Waterway transportation facilities including the Neuse River Navigation Company, and the Morehead City Port Commission;[60] railway, highway and airway transportation facilities;[61] public housing

[57] 226 N. C. 1, 9, 36 S. E. 2d 803, 809 (1947).
[58] 221 N. C. 472, 484, 20 S. E. 2d 825, 833 (1942).
[59] POPULAR GOVERNMENT (June, 1947) 13.
[60] Webb v. The Port Commission of Morehead City, 205 N. C. 663, 172, S. E. 377 (1933).
[61] *E.g.*, Turner v. City of Reidsville, 224 N. C. 42, 29 S. E. 2d 211 (1944); Hudson v. City of Greensboro, 185 N. C. 502, 117 S. E. 629 (1923).

facilities under the heading of "slum clearance," removing physical surroundings breeding disease, vice and crime;[62] a public auditorium;[63] a veterans' loan fund, World War Veterans' Loan Fund;[64] a state park.[65] More specifically, the court has held that "slum clearance" is a public purpose on the theory that among other benefits it removes physical surroundings breeding disease, vice and crime.[66]

"The State cannot enact laws, and cities and towns cannot pass effective ordinances, forbidding disease, vice, and crime to enter into the slums of overcrowded areas, there defeating every purpose for which civilized government exists, and spreading influences detrimental to law and order; but experience has shown that this result can be more effectively brought about by the removal of physical surroundings conducive to these conditions."[67] It was defendants' contention that police training, fitting officers to cope with crime already bred and on the march from its breeding places is no less a public purpose than the crime prevention enterprise of clearing slums, and comes within the constitutional meaning of this term by a wider margin than many of the concededly public purpose enterprises listed in the foregoing paragraph serving less than all the people.[68]

Long continued usage plays a part, but not a controlling part in determining "public purpose." In *Nash v. The Town of Tarboro* the Supreme Court of North Carolina said: "In determining whether or not a tax is for a public purpose, when considered in the light of custom and usage . . . courts should also take into consideration the fact, that a purpose not theretofore considered public, by reason of changed considerations and circumstances, may be so classified,"[69] citing as authority the case of *Fawcett v. Town of Mt. Airy*[70] where changing conditions moved the court to reverse a previous decision holding that water and lights were not a necessary municipal expense.

Courts in other jurisdictions have followed this reasoning of the Supreme Court of North Carolina in cases nearer to the point of this case than any thus far coming before this court. In *Tousley v. Leach,*

[62] *E.g.*, Mallard v. East Carolina Regional Housing Authority, 221 N. C. 334, 20 S. E. 2d 281 (1942); Wells v. Housing Authority of the City of Wilmington, 213 N. C. 744, 197 S. E. 693 (1938); *accord*, Cox v. Housing Authority of the City of Kinston, 217 N. C. 391, 8 S. E. 2d 693 (1938).

[63] Adams v. City of Durham, 189 N. C. 232, 126 S.E. 611 (1925).

[64] Hinton v. Lacy, 193 N. C. 496, 137 S. E. 669 (1927).

[65] Yarborough v. North Carolina Park Commission, 196 N. C. 284, 145 S. E. 563 (1928).

[66] Wells v. Housing Authority of the City of Wilmington, 213 N. C. 744, 197 S. E. 693 (1938).

[67] *Id.* at 748, 197 S. E. 693, 696 (1938).

[68] POPULAR GOVERNMENT (June, 1947) 12 (discusses cases coming within the law of public purpose in North Carolina).

[69] 227 N. C. 283, 286, 42 S. E. 2d 209, 211, 212 (1947).

[70] 134 N. C. 125, 45 S. E. 1029 (1903).

holding that attendance by city officials of Minneapolis at a meeting of the Mississippi Valley Association in St. Louis and of the Rivers and Harbors Congress in Washington, D. C., to confer on the construction of a deep waterway down the Mississippi River which might require the construction of wharves, docks and piers in Minneapolis to be a public purpose, the Supreme Court of Minnesota said: "Private corporations for profit send their men to meetings and conventions where information of value may be had. The thought is not that such trips are journeys for pleasure alone or merely cultural. They are supposedly of serious purpose in practical aid of public interests."[71]

In this particular case the court drew a distinction between pleasure jaunts and meetings for the serious purpose of attending to governmental affairs, saying:

> "That there are abuses connected with the expenditure of public money in traveling to meetings, conferences, conventions, and public hearings is not to be questioned. Traveling at public expense gives a thrill and perhaps carries a sort of prestige. Men like it. It is to be hoped that unjustifiable running about the country with pleasure the real end and public service the excuse is lessening. So much has the practice prevailed without just cause that the word 'junket,' not bad in its derivation or early use, has come to be applied with a suggestion of shame and as indicative of a petty use of public money to traveling to such meetings."[72]

This distinction was observed in *Smith v. Holovtchiner*, where the court was ready to approve as a public purpose attendance on meetings at which definite information was to be gathered, saying: "Expenditures of this sort, necessary to ascertain a particular fact upon which the action of the . . . schools is to depend, stand upon a different footing."[73] It was observed in *The People* ex rel. *Schlaeger v. Bunge Bros. Coal Co.* when the court upheld tax levies for dues to the U. S. Conference of Mayors and to a state organization of city officials for research and educational services on city problems, saying: "It seems clear that the discussion, by mayors and other city officials, of problems affecting the well-being of their respective cities, and the study of conditions affecting taxpayers of municipalities, are public purposes, and moderate appropriations for those purposes are justified."[74] It was observed in *Ward v. Frohmiller* where the court upheld as a public purpose travel expenses in attending a conference of governors to discuss various governmental

[71] 180 Minn. 293, 295, 230 N. W. 788, 789 (1930).
[72] *Id.* at 296, 230 N. W. 788, 789 (1930).
[73] 101 Neb. 248, 249, 162 N. W. 630 (1917).
[74] 392 Ill. 153, 166, 167, 64 N. E. 2d 365, 371 (1945); *accord*, Hays v. City of Kalamazoo, 316 Mich. 443, 25 N. W. 2d 787 (1947).

problems including migratory labor, relief and social security problems, saying:

> "It is a notorious fact, of which the courts cannot avoid taking judicial notice, that particularly during the last decade the problems which may properly be included under the head of 'public welfare and social security' have grown enormously. . . . Due to the migratory habits of a considerable portion of the population of the United States, obviously it is utterly impossible for any state to deal properly with these problems without taking into consideration similar problems; and their complications, arising in other states, and endeavoring to work out a plan of action in harmony with like activities carried on by the sister states. These problems are to a great extent new, and only continued experimentation and the exchanging of ideas and information with similar officials in other jurisdictions can produce a satisfactory system of dealing with them."[75]

However, some jurisdictions do not go as far as the cases just cited. In fact, in *The City of Phoenix v. Michael* the Supreme Court of Arizona held up its hands in horror at the suggestion that public officials might have something yet to learn by saying: "No greater affront can be offered an aspirant to public office than that he is not qualified. It seems to be the rule that qualification to get in office is a guarantee of qualification to fill it competently. That is the American idea. The officers of the state's incorporated cities and towns, in seeking office, doubtless would most strenuously resent, as would their constituents, a suggestion that they were not qualified to discharge the duties of the office."[76] And in *Lake County v. Neuenfeldt* the court refused approval as a public purpose to travel expenses for the superintendent of the county poor asylum to attend state and national charity association meetings, saying: "Public officers are presumed to have the necessary qualifications."[77]

These decisions directly support the underlying philosophy of the plaintiff's brief which argued:

> "When a man applies for position as a policeman, he is supposed to possess the proper qualifications. The municipal authorities so satisfy themselves before he is employed. After several

[75] 55 Ariz. 202, 208, 100 P. 2d 167, 169 (1940). On similar theories courts have approved as a public purpose expenditures in the following cases: Powell v. City and Council of San Francisco, 62 Calif. App. 2d 291, 144 P. 2d 617 (1944) (payment of expenses of municipal officials to and from Washington, D. C., to attend Congressional Committee); Ward v. Frohmiller, *supra* (payment of expenses of Arizona officials to Council of State Governments in San Francisco); Kelso v. Teale, 106 Calif. 477, 39 Pac. 948 (1895) (payment of expenses of Los Angeles delegate to World's Congress of Librarians and American Library Association Conference in Chicago).

[76] 61 Ariz. 238, 243, 148 P. 2d 353, 355 (1944).

[77] 78 Ind. App. 566, 136 N. E. 580, 581 (1922).

> years' experience as policeman in a town, he should be well versed and trained in the duties of his office; otherwise, he would not be retained. There is no allegation in the pleadings that the defendant P. R. Kitchin was not proficient in performance of his duties to the municipality. To train him for performance of duties which were incumbent upon him only as an officer of the State was not a necessary expense of the Town of Weldon."[78]

The law enforcement officers of North Carolina have long since turned their backs on this philosophy of the Arizona and Indiana courts and the plaintiff's brief that a uniform and a badge, a "billy" and a gun, are all the attributes a policeman needs in the discharge of his duties. Many officers in the beginning had a sneaking sense of shame at being caught in a "training school," but they did not mind attending first a "convention," then a "conference," then an "Institute," and finally a 'school." They have joined together with other officials in building the Institute of Government to carry out a program of statewide, district, and local training schools to bring systematic training within reach of every officer in the state. Some of them are attending the F. B. I. National Police Academy, Northwestern University Traffic Institute, the Yale Bureau of Street and Highway Traffic, and other institutions. Every vestige of the holiday trip, the pleasure jaunt, the excursion or the junket has disappeared from schools like these, and officers have settled down to hard and compelling study for ten to twelve hours a day in the acquisition of knowledge and information to use in their daily work on returning home. All of them are bringing new vitality to the administration of government in the cities, the counties and the state of North Carolina and lifting it to a higher level of performance in the full faith and confidence that the Supreme Court of North Carolina will not turn back the clock upon their efforts.

In sustaining the foregoing argument, Mr. Justice Ervin said:

> "The plaintiff further asserts that the expenditure named in his complaint must be adjudged illegal as violative of the Constitution of North Carolina even if it was sanctioned by legislative fiat.
>
> "In this connection, the plaintiff maintains that when special training is given a police officer, the resultant increase of proficiency is a personal attribute of the officer; that the city or town can not compel the officer to continue in its service after obtaining the training until it has received recompense for its outlay of public funds; and, that, therefore, the disbursement of public moneys for such purpose inures to the private advantage of the officer rather than to the collective benefit of the inhabitants of the city or town. Upon this premise, the plaintiff asserts that the expending

[78] Brief for Appellant, page 10, Green v. Kitchin, 299 N. C. 450, 50 S. E. 2d 545 (1948).

of municipal tax money to train a policeman diverts public funds to the private use of the policeman contrary to Article V, Section 3, of the Constitution expressly limiting the levy of taxes to public purposes. . . .

"It is unquestionably a sound and salutary rule that the power to make appropriations of money out of the treasury of a city or town must be measured by the same criterions as those by which it is raised by taxation and put into such treasury.

"A tax or an appropriation is certainly for a public purpose if it is for the support of government, or for any of the recognized objects of the government. . . . Hence, the expenditure challenged by the plaintiff was for a public purpose because its object was the maintenance of law and order, which is an essential function of government.

"The fact that the execution of the purpose required payment of the money involved to the defendant, P. R. Kitchin, did not affect its public character. This is true because 'the test is not as to who receives the money, but the character of the purpose for which it is to be expended.'

"The complaint reveals that the defendant, P. R. Kitchin, has been serving the Town of Weldon in the capacity of a police officer ever since he completed the course at the National Police Academy. For this reason, it seems somewhat inappropriate to argue here that the spending of municipal funds to train a policeman for the more efficient performance of his duties must be deemed to serve merely a private purpose because the municipality can not compel him to remain in its service after obtaining the training until it has received recompense for its outlay of public moneys. But in any event, this objection seems relevant to the question of the advisability of making the expenditure rather than to the existence of the power to make it. If the city or town does not choose to rely upon the mutual confidence and satisfaction existing between it and the police officer to induce the officer to stay in its employment for the desired period, it has the option of exacting an agreement from the officer with respect to this matter before making any outlay of public moneys.

"The expenditure of tax moneys by a city or a town to further the training of its policemen does not grant an exclusive emolument or privilege to the policeman contrary to Article I, Section 7, of the Constitution because it is for a public purpose and 'in consideration of public services.' "[79]

III

Is Police Training for Police Officers a Necessary Expense Within the Meaning of Article VII, Section 7, of the North Carolina Constitution?

From time to time the Supreme Court of North Carolina has laid

[79] Green v. Kitchin, 229 N. C. 450, 455, *et seq.* 50 S. E. 2d 545, 548 *et seq.* (1948).

down guiding principles for determining whether a particular expense is a necessary expense.

"In defining 'necessary expense' we derive practically no aid from the cases decided in other States. . . . We must rely upon our own decisions," said the Supreme Court of North Carolina in *Henderson v. City of Wilmington.*[80] "There are some things clearly within the line" of necessary expenses, said the court in *Mayo v. Commissioners of Town of Washington,* "such as courthouses and jails . . . or public highways and public bridges. . . .

There are others that are clearly outside the line of necessary expenses, such as appropriations to build railroads, cotton factories, to build and operate electric street car lines, etc."[81]

". . . it seems to us that it may be reasonably considered as certain," said the court in *Fawcett v. Mt. Airy,* supra, ". . . that the words 'necessary expense, do not mean expenses incurred or to be incurred for purposes or objects that are only for the procurement or maintenance of things absolutely essential to the existence of the municipality."[82] On the other hand, everything that will be useful and helpful to a unit's growth will not be considered a necessary expense. For, in *Henderson v. Wilmington,* supra, the court, in holding that wharves and docks, admittedly helpful and even necessary to Wilmington's growth as a seaport city, were not a "necessary expense," said: "With the mere utility of the enterprise we are not concerned."[83] Somewhere between the "subsistence line" and the "utility line," the "necessary expense line" must be drawn.

In *Fawcett v. Mt. Airy,* supra, the court undertakes to prescribe a test helpful in determining a necessary expense: "The words 'necessary expense,' then, must mean such expenses as are or may be incurred in the establishing and procuring of those things without which the peace and order of the community, its moral interests and the protection of its property and that of the property and persons of its inhabitants would seriously suffer considerable damage. . . ."[84] And again in *Henderson v. City of Wilmington:* "If the purpose is the maintenance of the public peace or the administration of justice; if it . . . purports to be an exercise by the city of a portion of the State's delegated sovereignty . . . in these cases the expense required to effect the purpose is 'necessary' within the meaning of Article VII, sec. 7. . . ."[85] In *Purser, Jr. v. Ledbetter,* the court sums up and reaffirms the main line

[80] 191 N. C. 269, 277, 132 S. E. 25, 29 (1926).
[81] 122 N. C. 5, 15, 29 S. E. 343, 346 (1898).
[82] 134 N. C. 125, 127, 45 S. E. 1029, 1030 (1903).
[83] 191 N. C. 269, 276, 132 S. E. 25, 29 (1926).
[84] 134 N. C. 125, 127, 128, 45 S. E. 1029, 1030 (1903).
[85] 191 N. C. 269, 279, 132 S. E. 25, 30 (1926).

of distinction between public purposes which are necessary expenses and those which are not: "It may be conceded, as stated *supra*, that the term 'necessary expenses' does not imply expenses without which government cannot exist. Still there is implied in it a certain degree of exigency, the essentials of frugality and economy, and a definite quality—governmental in character—which do not yield to arguments *ab convenienti* and which cannot be dismissed from the provision without depriving it of all significance."[86]

It would seem that training law enforcement officers for more effective law enforcement work comes clearly within the "necessary expense line" which is drawn somewhere between the "subsistence line" and the mere "utility line"; that it comes clearly within "those things without which the peace and order of the community, its moral interests and the protection of its property and that of the property and persons of its inhabitants would seriously suffer considerable damage"[87] in these days of trained and organized criminals; that it comes clearly within the purview of the "maintenance of the public peace and the administration of justice,"[88] and "purports to be an exercise by the city of a portion of the state's delegated sovereignty";[89] that it comes clearly within that "certain degree of exigency, the essentials of frugality and economy, and a definite quality,—governmental in character,—which do not yield to arguments *ab convenienti* . . . ;[90] that analysis of those public purpose expenses and those held not to be necessary carries the conviction that this particular expense falls within the necessary expense grouping."

To illustrate: from 1868 to 1948, the court has classified the following as necessary expenses within the meaning of Article VII, Section 7: (1) the ordinary expenses of government, including salaries and wages and office expense (decisions specifically mention salaries of mayor, treasurer, city attorney, janitor, county commissioners' pay, county attorney, sheriff's salary and expense of sheriff's office, register of deed's salary and expense of office, clerk superior court's salary and expense of office, county accountant's salary, police, jurors' fees, feeding and care of prisoners, tax listing expense, expense of holding elections, etc.); (2) the building and repair of municipal buildings such as city halls, county courthouses, guardhouses and jails, fire alarm systems, fire stations and sites therefor, police station, office rent for suitable headquarters, etc.; (3) the building and repair of public roads, streets, and bridges; (4) the building and repair of market houses; (5) the building and repair of county homes and the maintenance of the poor; (6) fur-

[86] 227 N. C. 1, 7, 40 S. E. 2d 702, 707 (1946).
[87] Note 84, *supra*.
[88] Note 85, *supra*.
[89] *Ibid.*
[90] Note 86, *supra*.

nishing adequate water supply, including the digging of wells, contracting for water supply, building of water-works plants; (7) the building of sewerage systems; (8) the building of electric light plants; (9) performing autopsy, maintenance of the public peace, and other phases of the administration of justice; 10) fire insurance for school buildings; (11) incinerators; (12) professional services in refunding bonds; (13) contract with hospital for care of indigent sick and afflicted poor; (14) jetties; (15) abbatoir; (16) county farm agent's salary; and (17) cemeteries.

The court has classified the following as non-necessary expenses within the meaning or Article VII, Section 7: (1) liquor dispensary; (2) county stock fence; (3) chamber of commerce; (4) wharves and docks; (5) cotton platform; (6) county and city hospital; (7) municipal airport; (8) city auditorium; (9) schools; (10) public library; (11) land and buildings for athletics purposes; (12) railroads; and (13) recreation. By way of dictum, the court has classified an electric street car line as a non-necessary expense.[91]

This argument is further buttressed by the principle announced by the court in *Fawcett v. Mt. Airy*, supra, when water works systems and electric light plants crossed the dividing line between non-necessary and necessary expenses on the theory that: "It is not to be expected, in the changed conditions which occur in the lives of progressive people, that things deemed necessary in the government of municipal corporations in one age should be so considered for all future time." This position was reaffirmed in *Purser v. Ledbetter*,[92] supra: "Concededly, from its nature and purpose, a constitution is intended to be a forward-looking document, expressing the basic principles on which government is founded; and where its terms will permit, is to be credited with a certain flexibility which will adapt it to the continuous growth and progress of the State." This attitude is supported by the Supreme Court of Connecticut in *Bridgeman v. City of Derby:*

> ". . . what is indispensable to the attainment and maintenance of its [the municipality's] declared objects and purposes may change with changing circumstances. What might not have been implied at one time may be implied at another time. And we can well understand that the implication of a power to employ detectives might not exist in one generation, but might in another through the growth of population, the congestion of living conditions, the multiplied increase or dangers of criminal practices, and the easier evasion of detection arising through the agencies of human inventions."[93]

[91] *E.g.*, Coates and Mitchell, *"Necessary Expenses" Within the Meaning of Article VII, Section 7, of the North Carolina Constitution*, 18 N. C. L. REV. 93 (1940) (collection of authorities).

[92] 227 N. C. 1, 5, 40 S. E. 2d 702, 706 (1946).

[93] 104 Conn. 1, 6, 7, 132 Atl. 25, 27 (1926).

More specifically, it is submitted that the court holds a police officer's salary to be a necessary expense;[94] a sheriff's salary and office expenses, jurors' fees, and feeding and care of prisoners to be necessary expenses;[95] guardhouses and jails to be necessary expenses;[96] police stations to be a necessary expense;[97] performing an autopsy to be a necessary expense;[98] maintenance of the public peace and other phases of the administration of justice to be a necessary expense;[99] then, in-service training for police should be held a necessary expense as part and parcel of the problem of law enforcement and the administration of criminal justice in the courts. One of the main factors moving the Supreme Court of North Carolina to hold the lighting of streets to be a necessary expense was to aid its law enforcement: "The power to light the streets and public buildings and places of a city is one of implication, where it is not specially conferred, because the use of such power is necessary to fully protect the lives and comfort and property of its inhabitants. It is a most important factor, too, in the preservation of the peace and order of the community."[100]

It would hardly be doubted that proper equipment for police would come within the meaning of necessary expenses. If firearms for police would be considered a necessary expense, why not the training to use them? If fingerprint equipment would be a necessary expense, why not the training to take them? If plaster-cast materials for lifting foot prints would be a necessary expense, why not the training to use them? If reasonably useful scientific aids in crime detection would be a necessary expense, why not a thorough and systematic schooling in scientific aids? And if training in the uses of material equipment would be a necessary expense, why not the training of native abilities, and the development of latent skills? If hiring the talents and skills of experts to perform an autopsy or to investigate particular crimes calling for professional expertness and technical skill beyond the reaches of common experience would be a necessary expense, why not the training of officers in local police departments to reduce to the eliminating point the necessity for calling in these outside experts? The common experience of solicitors at the bar and judges on the trial bench all over North Carolina already bears out the conclusion that police training is a time and money saving, not a time and money wasting expense, and more than pays for itself in criminals caught that might have gone free, in

[94] Tucker v. The City of Raleigh, 75 N. C. 267 (1876).
[95] Nantahala Power & Light Co. v. The County of Clay, 213 N. C. 698, 197 S. E. 603 (1938).
[96] Haskett v. Tyrrell County, 152 N. C. 714, 68 S. E. 202 (1910).
[97] Hightower v. City of Raleigh, 150 N. C. 569, 65 S. E. 279 (1909).
[98] Withers v. The Board of Commissioners, 163 N. C. 341, 79 S. E. 615 (1913).
[99] Note 95, *supra*.
[100] Fawcett v. Town of Mt. Airy, 134 N. C. 125, 129, 45 S. E. 1029, 1031 (1903).

cases won that might have been lost through lack of thorough investigation and adequate preparation, in time saved in the dispatch of business in the criminal courts and in the promotion of justice which is "one of the chiefest ends of mankind on earth."

In arguing that schools for all the people are not a necessary expense and therefore schooling for that portion of the people known as police is not a necessary expense for which taxes may be levied without a vote of the people, the plaintiff undermined his own position; for the Supreme Court of North Carolina, in giving belated effect to Article IX, Section 3, of the North Carolina Constitution, providing that "one or more public schools shall be maintained in each district," reached the conclusion that taxes might be levied for schools without a vote of the people even though they were not a "necessary expense."[101] This conclusion was recognized by the court in *Bridges v. City of Charlotte:* "The plea that the levy of such a tax by a county, without submission to popular vote, is prohibited by Article VII, Section 7, of the Constitution, as not being for a necessary expense was raised and settled in *Collie v. Commissioners,* 145 N. C., 170, 59 S. E., 44, by the declaration that the requirement that the public schools be maintained is a mandate of a co-ordinate article of the Constitution of equal dignity and force, and must be obeyed; and that Article VII, Section 7, had no relation by way of limitation on the taxing power exercised for that purpose."[102]

While not refusing any benefits flowing from this favored status to which plaintiff's argument consigned him, the defendants stressed the difference between the *pre-service* training of youths in the public school system and the *in-service* training of governmental officials and employees on the job, and pointed out the fact that the F.B.I. Police Academy is open only to officers who are accredited members of police departments and stick to their position; that the power to train police is reasonably implied from the power to enforce the law and keep the peace; that enforcing the law and keeping the peace is essential to one of the chiefest objects of a municipal corporation; that this object is a public purpose within the constitutional meaning of that term as used in Article V, Section 3, of the Constitution, and that it comes within that inner circle of public purposes known as necessary expenses in Article V, Section 7.

Law enforcement is no less basic than schooling in the functions of government, and better law enforcement through systematic training, flowing through the police chief to all members of the Weldon police department in local schools and through them to the better protection

[101] Collie v. Commissioners of Franklin County, 145 N. C. 170, 59 S. E. 44 (1907).

[102] 221 N. C. 472, 478, 20 S. E. 2d 825, 829 (1942).

of the lives and property of all the people of Weldon, involves no discrimination against individuals or classes of individuals within the meaning of the constitution. This is particularly true when the city council representing all citizens selects the police chief representing all members of the police department to get training which he can bring back to them—a benefit so real to them that all members of the police department voluntarily increased their hours of work to the point that they absorbed his hours of work to do away with the expense of hiring a substitute, and so real to the chief that he retained long distance supervision over his department and added to a full-time load of study the overtime responsibility of frequent answers to emergency calls.

In further support of their contention, the defendants argued that in holding the expense under consideration to be a necessary expense, the court would not be bringing a new and separate function of government within the meaning of the term "necessary expense," as in adding roads and bridges, water and light and sewage systems, market houses and the like—it would bring in researching, informing, training and educational activities touching and improving law enforcement agencies and all other departments and functions of government. These services are no less basic because they are incident to the effective performance of all governmental functions—necessary or non-necessary—and the court has recognized this fact in specific holdings as a necessary expense the cost of performing an autopsy, incidental to the enforcement of the law;[103] the cost of insuring school buildings, incidental to the protection of public property;[104] professional services in refunding bonds incidental to the financing of governmental units and activities.[105]

Long continued usage has woven into the warp and woof of the administration of public affairs in the cities, the counties, and the state of North Carolina, habitual processes which are incident to and inseparable from it—processes which translate the law in books into law in action. Officers coming into office through election or appointment are more than likely to find they have some things yet to learn about their jobs. In learning these things: They have bought law books containing their powers and duties, hired attorneys to guide them through the mazes and pitfalls of the law, and added special attorneys with special courses to handle intricacies, which do not yield to the general practitioner's arts. They have visited particular counties, cities, and towns to study new methods, practices and techniques, improving accounting systems, tax collection procedures, tax listing and assessing practices, police de-

[103] Withers v. The Board of Commissioners, 163 N. C. 341, 79 S. E. 615 (1913).
[104] Fuller v. Lockhart, 209 N. C. 61, 182 S. E. 733 (1935).
[105] Morrow v. Commissioners of Henderson, 210 N. C. 564, 187 S. E. 752 (1936).

partment organizations and equipment, and related problems connected with the administration of government in all of its ramifications. They have brought in experts to conduct surveys and recommend improvements in the administration of particular departments and of governmental units as a whole. They have subscribed to service organizations to which they turn for light on current problems. Here in North Carolina, they are pioneering for the nation in sending officers and employees to training schools for courses of instruction where they can go beyond the piece-meal, haphazard, and hand to mouth acquisition of knowledge and information picked up on the run, and learn in systematic and concentrated fashion in one place the newly developing methods, practices and techniques. They would now have to go to many parts of this, and other states combined, at great expense in time and money and bring back to their respective governmental units the knowledge and information which would help them raise the standards of government performance by lifting the poorest practices to the level of the best. These services pull their own weight and pay their own way by making tax dollars go further through improved administrative processes, and thus their whole influence tends toward keeping down rather than building up the costs of government. There is nothing in the constitution of the people, in the statutes of the General Assembly, or in the decisions of the court of this or any other state requiring the Supreme Court of North Carolina to arrive at the paralyzing conclusion that the powers to do these things are not reasonably to be implied from the powers expressly granted, or that they are not essential to the accomplishment of the declared objects of municipal corporations, or that they are not public purposes and necessary expenses within the meaning of the North Carolina Constitution.

Every two or four years hosts of newly elected officials come into the administration of public affairs in the cities, the counties, and the state of North Carolina. These officials are not born with a knowledge of the powers and duties of the offices to which they are elected—the office of sheriff or chief of police, clerk of court or register of deeds, city alderman or county commissioner. Their private occupations and professions do not teach them the powers and duties of public officials. The uncertainties of political life do not offer their incentives to study the responsibilities of a public office before they seek it. The democracy which clothes them with the public trust does not provide them with the training which fits them to discharge it. They go into office to learn by mistakes which might have been avoided in the school of hard knocks which sometimes knock harder on the public than on the public officer. The learning they acquire in this rough, ready, and expensive fashion

too often goes out of office with them at the end of their official terms. The mental attitude of a defeated official does not beget a tender solicitude for his victorious opponent. The successor who will gladly learn does not often find a predecessor who will so gladly teach. Retiring officers have been known to walk out of their office doors as the clock struck the end of their official terms without going to the trouble of a greeting to incoming officers waiting on the threshold. The only tie binding successive governmental administrations together today in most places is the clerical and stenographic helpers familiar with the office routine. Sometimes this tie is broken. There have been instances where outgoing officers have secured as good or better jobs elsewhere for their clerical and stenographic help—primarily to guarantee a start *de novo* to their successors, and incidentally to punish the people for daring to exercise their constitutional rights by turning out of office men who were old hands at the game.

Within the limits of our governmental experience, we have seen the political pendulum swing the balance of power from the king to the subject; from officers appointed by the crown to officers elected by the people; from the continuity of long-term tenure to the rotation of short-term officers; from the belief that the common man could do nothing to the belief that he can do anything; from the naïve notion of birth as the entitlement to office to the equally naïve notion of birth as a qualification of it; from the aristocratic notion that some men are born to fill an office to the democratic notion that all men are born knowing how to fill it; from the antiquated notion that some men are not as good as other men to the current notion that every man is as good as every other man and "a whole sight better."

Within that span of time we have lived to learn that the commonwealth may be plundered by favorites of the people as well as by favorites of the king; that "to the victors belong the spoils" may be alike the doctrine of hereditary rulers and elected office-holders; that shades of ancient spoilsmen may still gather in a modern sheriff's eyes; that remnants of the divine right of kings may still crack down in a policeman's billy; that the Constitutions of the state and the United States do not change the constitution of human nature; that mere forms of government guarantee neither the character nor the competence of the men in office; that the hope of popular government is not so much wrapped up in theories of government, centralized or localized, as in the effective and efficient handling of governmental affairs by efficient governmental officers, responsible and responsive to the people.

Defendants accordingly argued that police training for police officers

is a "necessary expense" within the meaning of Article VII, Section 7, of the North Carolina Constitution.

In sustaining the foregoing argument Mr. Justice Ervin said:

> "This Court has uniformly held that where the purpose for which a proposed expense is to be incurred by a municipality is the maintainence of public peace or administration of justice, or partakes of a governmental nature, or purports to be an exercise by the municipality of a portion of the State's delegated sovereignty, the expense is a necessary expense within the Constitution, and may be incurred without a vote of the people. . . .
>
> "It necessarily follows that the expenditure in controversy constituted a necessary expense within the meaning of Article VII, section 7, of the Constitution because the purpose of the expenditure was to enable the Town of Weldon to exercise that portion of the sovereignty of the State which had been delegated to it by the State for the maintenance of law and order within its borders. This holding harmonizes with Tucker v. Raleigh, 75 N. C. 267, where it is said that a debt contracted to obtain money to pay the compensation of the police is a necessary expense within the purview of the constitutional provision here considered."[106]

IV

Does Payment of the Salary and Expenses of the Police Chief of the Town of Weldon While Attending a Training School Come Within the Prohibition of Article I, Section 7, of the North Carolina Constitution, Providing: "No Men or Set of Men Are Entitled to Exclusive or Separate Emoluments or Privileges from the Community but in Consideration of Public Service?"

No one versed in the theory and practice of local, state, and federal governmental institutions in the United States will question the philosophy of this constitutional provision. It has been invoked to strike down a charter provision exempting one tobacco warehouse corporation from liability for negligence when other warehouses did not enjoy such a privilege;[107] a charter provision allowing a bank to charge excessive interest rates;[108] a statute authorizing the depositors of certain defunct banks to sell their claims to debtors of the same bank;[109] a statute imposing a license tax on some dry cleaners and allowing other dry cleaners to operate without this additional charge;[110] a statute increasing the liability of sureties on contractors' bonds in Buncombe County only;[111] a statute lessening the punishment for violating the prohibition laws in

[106] Green v. Kitchin, 229 N. C. 450, 457, 50 S. E. 2d 545, 550 (1948).
[107] Motley & Co. v. Southern Finishing and Warehouse Co., 122 N. C. 347, 30 S. E. 3 (1898).
[108] Simonton v. Lanier, 71 N. C. 498 (1874).
[109] Edgerton v. Hood, 205 N. C. 816, 172 S. E. 481 (1934).
[110] State v. Harris, 216 N. C. 746, 6 S. E. 2d 854 (1940).
[111] Plott Co. v. Ferguson Co., 202 N. C. 446, 163 S. E. 688 (1932).

five of the one hundred counties;[112] a statute directing a county to pay a recorder's salary after the recorder's court had been abolished;[113] and in a variety of anti-trust prosecutions.[114]

The Supreme Court of North Carolina has refused to strike down under this provision a grant of the power of eminent domain to public service corporations, because the grant was "in consideration of public services";[115] or to strike down a pension plan for school teachers, because it was authorized "in consideration of public services";[116] or workmen's compensation benefits for deputy sheriffs because it was "in consideration of public services";[117] or legislation in aid of veterans, because it was "in consideration of public services."[118] Surely justice should not strike down the provision of police training for police officers selected for their merits to take it and transmit it to all members of the police force; and through them bring the benefits of better law enforcement and increased protection to the lives and properties of all the people of Weldon, because it, too, is "in consideration of public services."

The fact that there was a *moral* obligation on the police chief to bring back the benefits of his training to all police officers of the Town of Weldon, and through them, to all the citizens of Weldon in consideration of the payment of his salary and expenses, as the plaintiff's brief suggested, does not mean the obligation was any the less *legal.* The fact that it could not be specifically enforced by a court of equity does not mean the commissioners of Weldon could not recover damages for its breach in a court of law. As a matter of fact, the defendant police chief has already given two years of service to the Town of Weldon since completing his training and is still continuing in performance of his obligations. The fact that the police chief is employed at the pleasure of the city council and for no fixed term and may be removed at will makes the contract of employment no less binding.[119] Nor could the police chief escape his obligation on the ground that the contract was indefinite in duration: "Ordinarily, where there is no additional expression as to duration, a contract for permanent employment

[112] State v. Fowler, 193 N. C. 290, 136 S. E. 709 (1927).
[113] Brown v. The Board of Commissioners of Wilmington, 223 N. C. 744, 28 S. E. 2d 104 (1943).
[114] *E.g.,* Bennett v. Southern Ry., 211 N. C. 474, 191 S. E. 240 (1937); State v. Atlantic Ice & Coal Co., 210 N. C. 742, 188 S. E. 412 (1936).
[115] *E.g.,* Carolina-Tennessee Power Co. v. Hiawassee River Power Co., 175 N. C. 668, 96 S. E. 99 (1918); Reid v. Norfolk Southern R. R., 162 N. C. 355, 78 S. E. 306 (1913).
[116] Bridges v. City of Charlotte, 221 N. C. 472, 20 S. E. 2d 825 (1942).
[117] Towe v. Yancey County, 224 N. C. 579, 31 S. E. 2d 754 (1944).
[118] Brumley v. Baxter, 225 N. C. 691, 36 S. E. 2d 281, 285 (1945); *accord,* Motley v. Board of Barber Examiners, 228 N. C. 337, 45 S. E. 2d 550 (1947).
[119] *Ex rel.* Kinsland v. Mackey, 217 N. C. 508, 8 S. E. 2d 598 (1940).

implies an indefinite general hiring, terminable at will."[120] In the case at bar, the promise of the police chief was the additional statement as to duration. The period "until the Mayor and Board of Commissioners feel the moral obligation fulfilled," is not too indefinite, for the mayor and commissioners will be held to the exercise of good faith and the period in essence is simply a "reasonable time." In cases where the employer had promised to give "life" employment in consideration of the employee's forbearing to sue, the court has held the contracts not void for indefiniteness because based on valid consideration.[121] In *Jones v. Carolina Power and Light Company* an employer promised "permanent employment for a term of at least ten years" in consideration of the employee's moving from South Carolina to Asheville and aiding in breaking a strike. The court held the contract was "not void as indefinite, or as wanting in mutuality because . . . the employee might terminate the contract at will, although the employer is [was] bound."[122]

In sustaining the foregoing argument, Mr. Justice Ervin said:

> "The complaint reveals that the defendant, P. R. Kitchin, has been serving the Town of Weldon in the capacity of a police officer ever since he completed the course at the National Police Academy. For this reason, it seems somewhat inappropriate to argue here that the spending of municipal funds to train a policeman for the more efficient performance of his duties must be deemed to serve merely a private purpose because the municipality can not compel him to remain in its service after obtaining the training until it has received recompense for its outlay of public moneys. But in any event, this objection seems relevant to the question of the advisability of making the expenditure rather than to the existence of the power to make it. If the city or town does not choose to rely upon the mutual confidence and satisfaction existing between it and the police officer to induce the officer to stay in its employment for the desired period, it has the option of exacting an agreement from the officer with respect to this matter before making any outlay of public moneys.
>
> "The expenditure of tax moneys by a city or a town to further the training of its policemen does not grant an exclusive emolument or privilege to the policeman contrary to Article I, Section

[120] *E.g.,* Malever v. Kay Jewelry Co., 223 N. C. 148, 149, 25 S. E. 2d 436, 437 (1943); May v. Tidewater Power Co., 216 N. C. 439, 5 S. E. 2d 308 (1939); *accord,* Wilmington v. Bryan, 141 N. C. 666, 54 S. E. 543 (1906).

[121] *E.g.,* Dotson v. Guano Company, 207 N. C. 635, 178 S. E. 100 (1935); Stevens v. Southern Ry., 187 N. C. 528, 122 S. E. 295 (1924); Fisher v. Roper Lumber Company, 183 N. C. 485, 111 S. E. 857 (1922). In the last cited case, Justice Hoke said, at page 490, 111 S. E. 857, 860: ". . . the law does not favor, but leans against, the destruction of contracts on account of uncertainty. Therefore, the courts will, if possible, so construe the contract as to carry into effect the reasonable intent of the parties, if it can be ascertained."

[122] 206 N. C. 862, 864, 175 S. E. 167 (1934).

7, of the Constitution because it is for a public purpose and 'in consideration of public services.' "[123]

V

Conclusion

No dissents were filed to the foregoing holdings of the court: (1) that the Town of Weldon had the power to pay the salary and expenses of its police chief while attending the police training school in question; (2) that this payment of salary and expenses is a public purpose for which tax monies may be spent within the meaning of Article V, Section 3, of the North Carolina Constitution; (3) that it is also a necessary expense within the meaning of Article VII, Section 7, of the Constitution, for which tax monies may be spent without a vote of the people; (4) that it is not a violation of Article I, Section 7 of the Constitution forbidding "separate emoluments or privileges from the community but in consideration of public service." In fact, two justices, concurring in a dissenting opinion filed on a point of pleading, went out of their way to say that: "If the question were properly before us we might not have any quarrel with the majority view that the expenses incurred in question here might fall within that class of expenditures that come within the definition of necessary expenses, within the meaning of Article VII, Section 7, of the Constitution of North Carolina." And there is nothing in the dissenting opinion itself to indicate a disagreement with this view.

The point of pleading on which the court differed involved the sufficiency of the demurrer to bring before the court the foregoing questions argued by plaintiff and defendant in the trial court, presented in their briefs on appeal, and discussed in the majority opinion of the court. It was raised for the first time in the dissenting opinion and will be discussed in the next issue of this Law Review.

[123] Green v. Kitchin, 229 N. C. 450, 457, 50 S. E. 2d 545, 549 (1948).